

**FILED**

**FEB 21 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

TONY R. WHITTAKER,

Plaintiff - Appellant,

v.

BROOKS PROTECTIVE SERVICES,  
INC.; et al.,

Defendants - Appellees,

No. 04-56860

D.C. No. CV-03-00182-GLT

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Gary L. Taylor, District Judge, Presiding

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Tony R. Whittaker appeals pro se from the district court's order dismissing his civil rights action as frivolous and designating him a vexatious litigant. We

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion, *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996), and we affirm.

The district court did not err in dismissing Whittaker's action as frivolous because his Second Amended Complaint, like its predecessors, did not contain the "short and plain" statement of the claims for relief that is required by Fed. R. Civ. P. 8. *See McHenry*, 84 F.3d at 1177-78; *see also Neitzke v. Williams*, 490 U.S. 319, 325 (1989) ("'[F]rivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.").

The district court did not abuse its discretion in issuing a vexatious litigant order. Whittaker was given notice and opportunity to oppose the pre-filing order, the district court specified Whittaker's history of frivolous and burdensome filings, and its order was narrowly tailored to remedy Whittaker's particular abuses. *See De Long v. Hennessey*, 912 F.2d 1144, 1147-49 (9th Cir. 1990).

**AFFIRMED**